

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IAN BROWN, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Civil Action No. 04-11924-RGS

NOTICE OF ERRATA

Defendant, the United States of America, hereby notifies the Court and the parties of an error in the government's Memorandum in Support of Motion to Dismiss, and Reply Memorandum in Support of Motion to Dismiss. Specifically, in those memoranda, the United States relied on the Eighth Circuit's decision in Miller v. United States, 643 F.2d 481 (8th Cir. 1980), *on rehearing* 643 F.2d 490 (8th Cir. 1981). See United States of America's Memorandum in Support of Motion to Dismiss at 6-7; United States of America's Reply Memorandum in Support of Motion to Dismiss at 3-4 & n.1. Subsequent to the filing of those memoranda, and upon further review of that case, it is apparent that the passages cited in the government's memoranda were taken from the original panel decision, rather than from the Eighth Circuit's en banc panel decision, which immediately follows the original panel decision in the published decision. Although the en banc panel decision does not repudiate the passages that were quoted from the panel decision, and indeed concludes that the panel erred by not dismissing the underlying action pursuant to the Feres doctrine, see 643 F.2d at 490-95, the en banc panel decision does not repeat the quoted language either.¹ We regret the

¹ We note that the KeyCite feature of WESTLAW does not indicate that the original panel decision was vacated or reheard en banc. See Attachment.

error. We note, however, that it does not alter the government's position that this action should be dismissed against the United States under the Feres doctrine.

Respectfully submitted,

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